IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2857 OF 2002

C.M.Shreedharan .. Petitioner

vs

N.T.C.(S.M.) Ltd & ors .. Respondents

Mr P.M.Patel for Petitioner

Ms Nandini Menon for Respondents

CORAM: D.G.KARNIK, J

DATE: 29th June, 2005

P.C.

1. By this petition the petitioner-employee challenges the judgment and order dated 2nd March, 2002 passed by the Member, Industrial Court, Mumbai in the Complaint bearing U.L.P. No.378 of 1993.

2. The petitioner was employed in Kohinoor Mills Ltd situated in Mumbai. In January, 1982 workmen of all the textile mills in Mumbai went on strike. The strike was declared as illegal on 8th February, 1982. In October, 1983 Textile Undertakings (Taking over of Management) Act, 1983 came into operation. The management of the Kohinoor Mills was taken over by the National Textile Corporation Ltd (for short N.T.C.) under the provisions of that Act. By a series of transfers thereafter the ownership and management of the Kohinoor Mills changed hands and finally by a Notification dated 8th January 1998 the ownership and management of the Kohinoor Mills Ltd stands vested in the respondent no.3.

3. In March, 1993 the petitioner filed a complaint in the Industrial Court, Mumbai purpurtingly under section 28 read with item nos. 5 and 9 of Schedule IV to Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU and PULP Act). In the complaint the petitioner inter alia alleged that he was ready and willing to work in the mill but the respondents had not offered him work and had not paid the salary thereby committing unfair labour practices under item nos. 5 and 9 of Schedule IV. At the stage of hearing of the petition, learned counsel for the petitioner states that the petitioner is restricting its claim for unfair labour practices only under item no.9 of Schedule IV of MRTU AND PULP Act, 1971. The respondents did not file the written statement within the time allowed by the Industrial Court. It appears that the respodnents' request to file the written statement which was delayed was not granted and the matter was heard without the written statement of the respondents. The petitioner examined himself but did not examine any witnesses. After considering the evidence adduced by the petitioner and after hearing the parties the learned Member of the Industrial Court

dismissed the complaint by his order dated 2nd March, 2002. That order is impugned in this petition.

4. The complaint which was made by the petitioner before the Industrial Court is one of the many complaints which were filed by several workmen. Some of the complaints were filed under section 33 C (2) of the Industrial Disputes Act while some of the complaints were filed under section 28 read with item nos.5 and 9 of Schedule IV of the MRTU and PULP Act. The nature of all these complaints have been considered by this Court in its landmark judgment in Sada Phansekar & ors vs National Textile Corporation (SM) reported in 1997 II CLR 801. In the said case after considering the detailed submissions and the entire gamut of the disputes arising outof complaints of the workmen in all Mills who had gone on strike similar complaints by other workmen this court remanded the matter for trial to the Industrial Court in the light of the observations made therein. In my view, the points which were considered by this Court in great details in the said decision have not been addressed to in the decision in the present complaint. In the circumstances, remand is

necessary.

5. Learned counsel for the respondent nos. 2 and 3 also submits that the matter be remanded back to the Industrial Court with a permission to them to file the written statement. Request to condone the delay and permit the respondents to file the written statement was made to the Industrial Court and was rejected erroneously. There are several issues of law and facts including the issue of jurisdiction which need to be addressed to and which can be only dealt with after the respondent nos. 2 and 3 are permitted to file the written statement. Learned counsel for the respondent nos. 2 and 3 submits that the respondents are willing to pay reasonable costs for the delay in filing of the written statement. In my view, interest of justice requires that the respondent nos. 2 and 3 be permitted to file the written statement subject to payment of costs. Furthermore, no prejudice is likely to be caused to the petitioner by an order of remand because even without the written statement his application has been dismissed and in fact the order of remand benefits him.

6. In the circumstances, the petition is partly

allowed. The impugned judgment and order is set aside and the matter is remanded back for re-hearing before the Industrial Court, Mumbai. The respondent nos. 2 and 3 are permitted to file the written statement before the Industrial Court subject to payment of costs of Rs.5000/-. The petitioner is also permitted to carry out the amendment in the complaint to incorporate the events which have occured subsequent to the filing of the original complaint.

7. Parties shall appear before the Industrial Court, Mumbai on 1st August, 2005.

8. Authenticated copy allowed. All concerned to act on a copy of this order authenticated by the Court Associate.

D.G.KARNIK, J